

BROWN, WEGNER & BERLINER LLP  
Matthew K. Wegner (SBN 223062)  
mwegner@bwb-lawyers.com  
William J. Brown, Jr. (SBN 192950)  
bill@bwb-lawyers.com  
2603 Main Street, Suite 1050  
Irvine, California 92614  
Telephone: 949.705.0080  
Facsimile: 949.794.4099

Attorneys for Plaintiff NUVASIVE, INC.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NUVASIVE, INC., a Delaware  
corporation,

Plaintiff,

v.

MADSEN MEDICAL, INC., a  
Nevada corporation; KRIS MADSEN,  
an individual residing in Nevada; and  
DOES 1-10, inclusive.

Defendants.

Case No. '13CV2077 BTM RBB

**NUVASIVE INC.'S COMPLAINT FOR:**

- (1) CONVERSION;**
- (2) COMMON COUNT;**
- (3) BREACH OF CONTRACT;**
- (4) DECLARATORY RELIEF;**
- (5) BREACH OF CONTRACT  
(NONDISCLOSURE  
AGREEMENT);**
- (6) BREACH OF CONTRACT (NON-  
COMPETE AGREEMENT); AND**
- (7) UNFAIR COMPETITION.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff NuVasive, Inc. (“NuVasive”) alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. NuVasive is a corporation incorporated under the laws of Delaware,  
4 authorized to do business in California, with principal place of business in San Diego  
5 County, California.

6 2. Defendant Madsen Medical, Inc. (“MMI”) is a corporation incorporated  
7 under the laws of Nevada, doing business in Clark County, Nevada. This Court has  
8 personal jurisdiction over MMI because it has consented to local jurisdiction via a  
9 forum selection clause under the written contract that is at issue in this litigation.  
10 NuVasive is informed and believes that MMI is the alter ego of Defendant Kris  
11 Madsen.

12 3. Defendant Kris Madsen (“KM”) is an individual residing and domiciled  
13 in Nevada. KM is a principal of MMI. This Court has personal jurisdiction over KM  
14 because she has consented to local jurisdiction via a forum selection clause under the  
15 written contract that is at issue in this litigation.

16 4. The jurisdiction of this Court over the subject matter of this action is  
17 predicated on 28 U.S.C. § 1332 because the Plaintiff, on one hand, and Defendants, on  
18 the other hand, are citizens of different states, and the amount in controversy exceeds  
19 \$75,000.00, exclusive of interest and costs.

20 5. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because all  
21 or a substantial part of the events and omissions giving rise to the Plaintiff’s claims  
22 occurred in this District and because all or a substantial part of the property that is the  
23 subject of this action is situated in this District, and because the parties have  
24 consented and agreed that venue is proper in San Diego pursuant to the forum  
25 selection clause under the written contract that is at issue in this litigation.

26 6. NuVasive is currently unaware of the identities of the parties named  
27 herein as “DOE” defendants. Upon information and belief, such DOE defendants are  
28 responsible for the damages suffered by NuVasive as pled herein, and therefore

1 NuVasive sues them by fictitious names. NuVasive will amend its Complaint at such  
2 time as the true names and capacities of the DOE defendants have been ascertained.

3 **FACTS COMMON TO ALL CLAIMS**

4 **The Exclusive Sales Representative Agreement**

5 7. On or about January 1, 2011, NuVasive and MMI entered into an  
6 Exclusive Sales Representative Agreement (“ESR Agreement”). The ESR Agreement  
7 set forth certain terms under which MMI, as Representative, would serve as  
8 NuVasive’s exclusive sales representative for NuVasive’s medical device products in  
9 certain territories within the State of Nevada, State of Arizona, State of Utah, and  
10 State of California. The ESR Agreement followed a number of prior distributor  
11 agreements between NuVasive and MMI over the course of approximately six years.  
12 KM signed the ESR Agreement on behalf of MMI. Under the ESR Agreement, MMI  
13 was paid commissions for obtaining orders for NuVasive products in the  
14 aforementioned territories.

15 8. The ESR Agreement provided, among other things, that MMI was to  
16 meet certain quotas for the sale and distribution of NuVasive products. ESR  
17 Agreement, Section 6.1.

18 9. The ESR Agreement conferred on NuVasive the right to terminate the  
19 ESR Agreement under certain circumstances. For example, NuVasive had the right to  
20 terminate MMI if it “default[ed] in the performance of any provision of the  
21 Agreement,” (Section 11.2), and if MMI were deemed to be in “Poor Standing” under  
22 the quota provisions of Section 6.1. ESR Agreement, Section 11.3. In addition to  
23 certain termination rights that were available to NuVasive under the ESR Agreement,  
24 Section 11.5(d) of the ESR Agreement further entitled NuVasive, upon termination of  
25 MMI for a material breach, “to solicit, contract with, or hire any sales representatives  
26 of Representative [MMI].”

27 10. As a sales representative for NuVasive products, KM had access to  
28 confidential information at NuVasive, including trade secrets and other proprietary,

1 competitively-sensitive information. Under the ESR Agreement, MMI and its  
2 employees and agents (including KM) agreed to protect NuVasive's proprietary,  
3 confidential information from disclosure. Specifically, MMI and KM were, and are,  
4 obligated not to "use, disclose, disseminate or otherwise allow access to [NuVasive's]  
5 Confidential Information [as defined in the ESR Agreement] of the other Party to  
6 anyone other than to employees that have a need to know such Confidential  
7 Information . . . ." ESR Agreement, Section 10.2. The ESR Agreement sets forth  
8 penalties for the unauthorized disclosure of NuVasive's Confidential Information,  
9 including, but not limited to, injunctive relief. ESR Agreement, Section 10.8.

10 11. Pursuant to the ESR Agreement, MMI, KM, and any of MMI's  
11 employees and/or agents were prohibited from competing with NuVasive for a period  
12 of one year following the termination of the ESR Agreement. Specifically, the ESR  
13 Agreement sets forth that

14 [d]uring the Term and for a period of one (1) year following the  
15 expiration or termination [of the ESR Agreement], neither Representative  
16 nor any of Representatives' partners, employees, sub-contractors, sales  
17 personnel (whether employees of Representative or independent  
18 Contractors), affiliates or agents . . . shall (i) develop, represent, promote  
19 or otherwise sell within the Territory any lines or products that, in the  
20 Company's reasonable judgment, compete with the Products covered by  
21 this Agreement, (ii) solicit (directly or indirectly) any current or former  
22 customers of NuVasive to purchase any products or lines that are, in the  
23 Company's reasonable judgment, competitive with the Products covered  
24 by this Agreement, or (iii) solicit or offer work to, directly or indirectly,  
25 any of NuVasive's employees, agents or representatives.

26 ESR Agreement, Section 16.3. Per the agreement of the parties, Section 16.3 of the  
27 ESR Agreement "shall be interpreted and enforced in accordance with the laws of the  
28 state in which the Representative last resides while performing services for

1 NuVasive,” which in this instance is Nevada. By its terms, Section 6.13 survived the  
2 termination of the ESR Agreement.

3 12. Section 12.1(a) of the ESR Agreement sets forth that “[a]ny and all suits  
4 hereunder shall be brought and resolved solely and exclusively in, and the parties  
5 hereby irrevocably consent to the exclusive jurisdiction and proper venue of, the state  
6 and federal courts located in the County of San Diego, State of California, USA, and  
7 waive any objections thereto based on any ground including improper venue and  
8 Forum Non-Conveniens.” ESR Agreement, Section 12.1(a).

9 13. “The prevailing party in any action or suit shall be entitled to recover all  
10 costs it incurred in connection therewith, including, without limitation, reasonable  
11 attorneys’ fees.” ESR Agreement, Section 12.1(b).

12 **NuVasive Lawfully Exercises Its Termination Right Under The ESR Agreement**

13 14. MMI and KM engaged in various breaches of the ESR Agreement,  
14 including but not limited to, failing to meet the quota requirements of Section 6.1.

15 15. Consequently, on or about August 31, 2012, NuVasive exercised its right  
16 to terminate the ESR Agreement, and delivered notice of such termination to KM and  
17 MMI.

18 16. After the termination of the ESR Agreement, NuVasive  
19 exercised its contractual right to hire the following MMI representatives, among  
20 others: Matthew Smith, Stephan Kordonowy, and Frank Orlando. In the time since  
21 then, MMI and KM (and others working on their behalf) have issued various threats  
22 toward these and other NuVasive employees, and have made false and disparaging  
23 comments about them and NuVasive in the presence of doctors, medical service  
24 providers, and/or current and former customers of NuVasive.

25 **MMI Fails To Return Property To NuVasive or Compensate For Same**

26 17. Under Section 11.1 of the ESR Agreement, MMI agreed that “following  
27 termination for any reason, Representative will be responsible for returning any  
28 outstanding inventory items and will be held responsible for missing items.” ESR

1 Agreement, Section 11.1. Defendants further agreed that, within ten days of  
2 termination of the Agreement, they were to return all “trademarks, trade names,  
3 patents, copyrights, designs, drawings, formulas or other data, photographs, samples,  
4 literature, sales aids of every kind.” ESR Agreement, Section 11.5.

5 18. In the weeks following the termination of the ESR Agreement, NuVasive  
6 conducted, at its expense, an on-site inspection of all outstanding NuVasive products  
7 at hospitals and MMI’s various facilities in Nevada. After an exhaustive inventory  
8 analysis, NuVasive determined that there was over \$360,000 worth of equipment and  
9 product inventory missing, for which MMI was unable to account.

10 19. Based on its inventory analysis, NuVasive demanded that MMI  
11 reimburse NuVasive for the missing inventory, pursuant to MMI’s obligations under  
12 the ESR Agreement. Specifically, in February 2013, NuVasive demanded payment of  
13 \$325,227.05, which is the difference of the value of the outstanding inventory, less  
14 some commissions that NuVasive acknowledged were still owing to KM.

15 20. Over the course of several months from 2012, and into 2013, MMI  
16 evaded complying with the demand for compensation for the missing inventory.

17 21. As of the date of this complaint, MMI has failed to remit any money to  
18 NuVasive for the lost inventory, in direct breach of its obligations under the ESR  
19 Agreement.

20 **Madsen Begins Employment With A Competitor and Shares NuVasive’s**  
21 **Confidential Information**

22 22. In or about June 2013, it came to NuVasive’s attention that KM had  
23 accepted a position working with Stryker—a medical device company and direct  
24 competitor of NuVasive—at some point in the preceding year. NuVasive is informed  
25 and believes that KM’s employment with Stryker includes her working on behalf of  
26 Stryker in the territories covered by the ESR Agreement.

27 23. NuVasive is informed and believes, and based thereon alleges, that  
28 beginning within one year of the August 31, 2012 termination of the ESR, and at

1 various times therein, KM engaged in discussions with various doctors, medical  
2 service providers, and current and former customers of NuVasive, in Nevada and  
3 elsewhere, for the purpose of soliciting business from them for her own benefit and  
4 that of her new employer, Stryker.

5 24. NuVasive is also aware of numerous instances in which KM, and/or  
6 agents working on her behalf, have made threatening, defamatory, and disparaging  
7 statements about NuVasive and NuVasive employees to third parties within the  
8 medical profession.

9 25. NuVasive is informed and believes, and based thereon alleges, that in  
10 addition to making efforts to solicit business on behalf of herself and Stryker, KM has  
11 disclosed to Stryker and others NuVasive's Confidential Information and/or trade  
12 secrets in direct violation of her non-disclosure obligations under the ESR Agreement.

### 13 **CLAIMS FOR RELIEF**

#### 14 **First Cause of Action**

#### 15 **(Conversion - Against All Defendants)**

16 26. NuVasive realleges and incorporates as though set forth fully herein the  
17 allegations found in paragraphs 1 through 25 above.

18 27. Under the ESR Agreement, NuVasive provided to MMI various items,  
19 including inventory, Products, samples, information and promotional materials that  
20 are the rightful property of NuVasive. Upon termination of the ESR Agreement,  
21 NuVasive was entitled to recover possession of all such property. NuVasive does not  
22 consent to KM or MMI continuing to possess NuVasive 's property.

23 28. NuVasive has demanded that Defendants return the items that NuVasive  
24 provided to MMI. Defendants each have intentionally failed to relinquish possession  
25 of such items to NuVasive. On information and belief, Defendants remain in  
26 possession of the property that rightfully should be in the possession of NuVasive.

27 29. The wrongfully possession of NuVasive 's property by Defendants has  
28 caused NuVasive to be deprived of the benefits of ownership of the property and the



1 commercial value of the property such that NuVasive has been harmed in an amount  
2 not less than \$325,227.05 (exclusive of interest), the exact amount of which will be  
3 proven at trial.

4 **Second Cause of Action**

5 **(Common Count - Against MMI)**

6 30. NuVasive realleges and incorporates as though set forth fully herein the  
7 allegations found in paragraphs 1 through 29 above.

8 31. Under the ESR Agreement, NuVasive and MMI operated under an  
9 arrangement whereby NuVasive provided inventory, products, and other materials to  
10 be used in the sales activities conducted by MMI.

11 32. NuVasive has kept and updated an accounting of the items that were  
12 provided to MMI and KM, including a record of what has and has not been returned  
13 to NuVasive. NuVasive has applied debit and credits according to the value of the  
14 items and amounts to be credited to MMI related to sales commissions.

15 33. MMI has failed to pay the balance set forth in the account maintained by  
16 NuVasive. MMI owes NuVasive \$325,227.05 on the account.

17 **Third Cause of Action**

18 **(Breach of Contract - Against All Defendants)**

19 34. NuVasive realleges and incorporates as though set forth fully herein the  
20 allegations found in paragraphs 1 through 33 above.

21 35. On or about January 1, 2011, NuVasive and MMI consented to entering  
22 into the ESR Agreement for the purpose of performing lawful business activities. An  
23 authorized representative executed the ESR Agreement on behalf of NuVasive and  
24 MMI.

25 36. At the time of entering the ESR Agreement, NuVasive and MMI each  
26 were duly constituted legal entities with capacity to contract.

27 37. NuVasive substantially performed its obligations under the ESR  
28 Agreement, to the extent such obligations were not otherwise excused.



38. MMI failed to perform its obligations under the ESR Agreement to return all NuVasive property to NuVasive, or otherwise take responsibility for the cost of the same.

39. MMI's failure to abide by the ESR Agreement caused harm to NuVasive. MMI failed to account for, or reimburse NuVasive for, outstanding inventory such that NuVasive has been wrongfully deprived of no less than \$325,227.05 in goods or payment (exclusive of interest).

### **Fourth Cause of Action**

**(Declaratory Relief – 28 U.S.C. § 2201 et. seq. – Against MMI)**

40. NuVasive realleges and incorporates as though set forth fully herein the allegations found in paragraphs 1 through 39 above.

41. NuVasive claims that (1) NuVasive properly terminated the ESR Agreement on or about August 31, 2012, and (2) NuVasive properly solicited and/or hired MMI representatives following the termination of the ESR Agreement. MMI claims that (1) NuVasive's termination of the ESR Agreement was improper, and that (2) NuVasive's solicitation and/or hiring of MMI representatives following the termination of the ESR Agreement was illegal. (Indeed, MMI has accused NuVasive employees of engaging in an illegal "conspiracy" to effectuate NuVasive's termination of the ESR Agreement and subsequent hiring of various MMI representatives.) By reason of these conflicting claims, the existence of substantial legal rights and obligations has been placed in doubt. Further, NuVasive alleges that substantial monetary damages, in an amount exceeding \$75,000.00, exclusive of interests and costs, have accrued and will continue to accrue, in part, because of the uncertainty regarding the parties' rights and obligations under the ESR Agreement.

42. Accordingly, NuVasive seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that (1) NuVasive was within its legal rights to terminate the ESR Agreement, and (2) NuVasive was within its legal rights to solicit and/or hire MMI representatives following the termination of the ESR Agreement.

**Fifth Cause of Action**

**(Breach of Contract (Nondisclosure Agreement) - Against All Defendants)**

43. NuVasive realleges and incorporates as though set forth fully herein the allegations found in paragraphs 1 through 42 above.

44. Under Section 10 (and subparts) of the ESR Agreement, MMI and KM were obligated to ensure that they and MMI employees would protect NuVasive's proprietary, confidential information from disclosure.

45. NuVasive substantially performed its obligations under the ESR Agreement, to the extent such obligations were not otherwise excused.

46. MMI, KM, and their employees and/or agents have improperly disclosed and used NuVasive's information, as described in more detail herein, in direct breach of the non-disclosure provisions of the ESR Agreement.

47. The aforementioned disclosures have caused harm to NuVasive by, among other things, improperly reducing NuVasive's sales and increasing NuVasive's expenses, in amounts to be proven at trial.

**Sixth Cause of Action**

**(Breach of Non-Compete Agreement - Against KM)**

48. NuVasive realleges and incorporates as though set forth fully herein the allegations found in paragraphs 1 through 47 above.

49. Under the ESR Agreement, KM was contractually prohibited from engaging in certain activities in competition with NuVasive for a period of one year after the termination of the ESR Agreement. ESR Agreement, Section 16.1.

50. NuVasive substantially performed its obligations under the ESR Agreement, to the extent such obligations were not otherwise excused.

51. KM has breached Section 16.1 of the ESR Agreement by accepting a position with NuVasive's competitor, Stryker; engaging in overtures with doctors, medical services providers, and current and former NuVasive customers within the territories covered by the ESR Agreement; disparaging NuVasive and its employees

1 (as discussed herein); and taking other action to solicit opportunities for herself and  
2 Stryker within the territories covered by the ESR Agreement.

3 52. KM's breaches of the ESR Agreement have caused harm to NuVasive by,  
4 among other things, improperly reducing NuVasive's sales and increasing NuVasive's  
5 expenses, in amounts to be proven at trial.

6 **Seventh Cause of Action**

7 **(Unfair Competition -- Against All Defendants)**

8 53. NuVasive realleges and incorporates as though set forth fully herein the  
9 allegations found in paragraphs 1 through 52 above.

10 54. Beginning at an exact date unknown to NuVasive, but at least since  
11 August 31, 2012, MMI, KM, and their agents have committed acts of unfair  
12 competition, as defined by California Business and Professions Code Section 17200  
13 by, among other things, violating various provisions of the ESR Agreement, publicly  
14 disparaging NuVasive and/or its employees, and disclosing NuVasive's Confidential  
15 Information for the purpose of harming NuVasive in the marketplace.

16 55. Defendants' wrongful acts as alleged throughout this Complaint  
17 constitute unfair, fraudulent, and/or unlawful acts in violation of Section 17200.

18 56. Defendants' acts of unfair competition have caused and continue to cause  
19 damage and injury to NuVasive in its money and/or property, while resulting in  
20 increased profits and/or unjust enrichment for Defendants.

21 57. NuVasive has suffered, and continues to suffer, irreparable harm by  
22 reason of Defendants' acts described herein—namely, making false and disparaging  
23 statements about NuVasive and its employees, violating the terms of the Non-  
24 Compete Agreement (as to KM), and disclosing NuVasive's Confidential Information.  
25 NuVasive has no adequate remedy at law, and cannot be adequately compensated for  
26 the damages and injuries it has sustained and will sustain if Defendants are permitted  
27 to continue with this conduct. As such, NuVasive seeks a preliminary and permanent  
28 injunction, as expressly permitted under Business & Professions Code Section 17200,

1 enjoining and restraining Defendants and their agents from engaging in the  
2 aforementioned conduct.

3 58. As a direct and proximate result of the aforementioned conduct,  
4 NuVasive has suffered losses of money and/or property in an amount yet to be  
5 ascertained, but which exceeds \$75,000 (exclusive of interest).

6 **DEMAND FOR JUDGMENT**

7 Therefore, Plaintiff NuVasive, Inc. respectfully requests judgment:

- 8 a. For compensatory damages in an amount to be proven at trial.  
9 b. For exemplary damages.  
10 c. For a permanent injunction enjoining Defendants from making false and  
11 disparaging statements about NuVasive and its employees, violating the terms of the  
12 Non-Compete Agreement (as to Defendant Kris Madsen), and disclosing NuVasive's  
13 Confidential Information for any purpose.  
14 d. For a judicial declaration pursuant to 28 U.S.C. §§ 2201-2202 that (1)  
15 NuVasive's termination of the ESR Agreement and (2) subsequent hiring of Madsen  
16 Medical, Inc. representatives were lawful and not in breach of the ESR Agreement.  
17 e. For its legal expenses, including court costs, attorneys' fees and other  
18 costs, as permitted in the ESR Agreement and otherwise permitted by law.  
19 f. Plaintiff be awarded any other just relief as the Court deems appropriate.  
20

21 DATED: September 5, 2013

BROWN, WEGNER & BERLINER LLP

22 s/ Matthew K. Wegner

23 By: Matthew K. Wegner  
24 William J. Brown, Jr.

25 Attorneys for Plaintiff NUVASIVE, INC.  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff NuVasive, Inc. demands a trial by jury.

DATED: September 5, 2013

BROWN, WEGNER & BERLINER LLP

s/ Matthew K. Wegner

By: Matthew K. Wegner  
William J. Brown, Jr.

Attorneys for Plaintiff NUVASIVE, INC.

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

NUVASIVE, INC., a Delaware corporation

(b) County of Residence of First Listed Plaintiff San Diego, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brown, Wegner & Berliner LLP  
2603 Main Street, Suite 1050, Irvine, California 92614  
Telephone 949.705.0080

**DEFENDANTS**

MADSEN MEDICAL, INC., a Nevada corporation

County of Residence of First Listed Defendant Clark County, Nevada  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'13CV2077 BTM RBB****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (Specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. § 1332**

Brief description of cause:

Action to recover for various breach of contract, conversion, common counts claims.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**  
Exceeds \$75,000

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/05/2013

SIGNATURE OF ATTORNEY OF RECORD

s/ Matthew K. Wegner

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE